

MINUTES
KITTY HAWK TOWN COUNCIL
Special Meeting
February 24, 2016
Kitty Hawk Town Hall, 9 AM

Agenda

1. Call to Order
2. Approval of Agenda
3. Discussion on the Current and Future Beach Nourishment Project
4. Adjourn

COUNCIL MEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Craig Garriss, Councilman Ervin Bateman, Councilwoman Lynne McClean and Councilman Jeff Pruitt

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Steve Michael, Management Assistant Melody Clopton and Fire Chief Lowell Spivey

1. CALL TO ORDER

Mayor Perry called this meeting to order at 9:00 a.m.

2. APPROVAL OF AGENDA

MPT Garriss made a motion, seconded by Councilman Bateman, to approve the agenda. The motion passed 5-0.

3. DISCUSSION ON THE CURRENT AND FUTURE BEACH NOURISHMENT PROJECT

Mayor Perry: *I have some special session opening remarks. This special session has been called to ensure open council discussion on past, current and future events with regard to the beach zone flood damage mitigation efforts in Kitty Hawk. From the first hint of opportunity to accomplish something that might prove helpful toward preventing routinely suffered damage in our beach zone, council has weighed financial risk to the community versus physical benefit to town and county.*

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Hearings, taxing rates and a Municipal Service District has been established for the purpose of adding sand to our beach in an effort to mitigate ocean damage. Construction bids were let but came back too high. Contractor scheduling was not favorable to our high velocity, storm prone beach. As a result, the low bid was rejected. Our purpose at this assembly is to determine how to proceed. In order to properly serve this community there are several risk factors that have been added to known and previously accepted concerns.

Some examples are:

1) From the beginning the beach nourishment tax funding was stretched to near maximum in order to cover all of the currently envisioned projects. However, there was some reserve factored into the equation for possible higher bid costs or maintenance issues. That small reserve became questionable when the fund, designed legislatively for beach restoration, was repurposed for other use. Done once, it can happen again to a fund already maxed well into the future. The beach nourishment Occupancy Tax fund has no reserve to cover cost overrun for a town. We are subject to cost above what is budgeted for this project.

2) Bid cost came in higher than estimated. While some increase is normal, it became impossible to overcome with no reserve in the nourishment tax fund. Now we have to decide whether to rebid and how to fund the next bid. Extending the window of time for construction from anytime the contractor chooses in 2016 to completion by the end of 2017 may help. However, discussion with potential contractors indicates that disruptions in other contracts could make them available to do some or all of this project. It's rather like booking a \$40 million dollar ticket knowing the carrier is overbooked and we will be placed on standby if not bumped. How then do we give proper notice to rental companies or hotels for accommodation of tourists?

3) As previously stated contractor availability is an issue. Numerous dredging and/or nourishment jobs are coming on line in 2016. Expanding the original 12 month window to 14 months did not help. Most of the contractors had fall and winter work schedules. That presents serious risk. Interrupted work during a storm could leave equipment on the beach. Partially finished work may be washed away before the job is completed. Depending on timing of the payment surveys, the question of who pays to put back the damage would be in question. For example FEMA would only pay for a named storm, the contractor would pay if damage occurred prior to a construction payment survey and the Town of Kitty Hawk would pay under other conditions. Determining responsible party becomes a crap shoot.

4) If all those risks factors are insufficient to cause pause, the recent court case in Nags Head over compensation for easement condemnation has raised the possibility of extremely expensive legal action for the Town. Consider that 39 easements remain outstanding as of this date. Each is a condemnation case required to construct the Kitty Hawk Project. Work around is not feasible. Based on the award verdict and cost to defend in the Nags Head case, Kitty Hawk could be subject to millions of dollars in costs we cannot afford. This Town has been down that road before. Can you imagine our constituents bearing that burden again?

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5) *All this risk is cumulative to the remaining 9 year debt for the fire house. The fire department says a fire truck needs replacement. The just finished ISO fire inspection indicates a fire station is required in the northern end of town.*

With all of this in mind I asked each council member to go to South Nags Head and view the current results of that project in consideration of the question before us today. Now, the question that council must answer is: (a) do we instruct the project engineer to rebid the Duck, Kitty Hawk, KDH project from any start date after contract signing, which is assumed sometime in May 2016, through the end of 2017? Or (b) is it in the best interest of our citizens to abandon the Kitty Hawk part of the project for another time when more stable funding is assured?

Mayor Perry asked if councilmembers had a chance to go to Nags Head and look around and all replied in the affirmative.

Folks it's time to put up or shut up. I have tried to put the facts in front of you and now it is time for discussion.

Bateman: *First of all you did a great job of laying out the possibilities. Where we stand, what could happen, worst case scenarios and best case scenarios. It is all out in front of us and that is the purpose of this meeting. Thank you for taking the time to do it.*

The very last statement you made about waiting for another time when more stable funding is assured. There is not going to be another time. This is it. There is not going to be any other time when the people of Kitty Hawk are going to be able to have beach nourishment. I don't think it's going to happen in my life time because the money is not out there so this is our one shot.

The reason people come down here is for the beach. They don't come here to go back into Kitty Hawk Village or to go over to Manteo. They come down here for the beach. Some come for Nags Head Woods or fishing but most come for the beach. If we don't have that beach they are not going to come.

Not having a beach is going to destroy our revenues and put us in a worse situation. My vote is we need to go forward. We are already in bed with the towns. What would it be like if Kill Devil Hills and Duck did it and Kitty Hawk does not? Who is going to come to Kitty Hawk and spend their money and stay at the Hilton or at one of our little cottage courts? Who is going to come and eat at the Black Pelican or Hurricane Mo's? They are not going to come here they are going to go somewhere else. If we have no tourism we have nothing. There is no other kind of industry for people to come to. Jeff's son is having to go to California to go to school and my son is living in Wilmington because there is nothing to keep our young people here except tourism or a trade like a doctor or a lawyer. Let's stay on track and do what we have to do and do the best we can.

Garriss: *I have said before that Kitty Hawk is our home and Kitty Hawk needs our help. We have to protect our home. This is an important issue and it is obvious because of the people who are*

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here this morning. Thank you for coming. I see a lot of people that don't live in the town limits and that shows this is important to everyone.

One of the main purposes of why we started this project was to protect our infrastructure. We have seen what happens to our roads and our dunes. We need to do all we can to protect them.

We had 3 bids that came in high. They all know they came in high and we asked them to rebid. Hopefully they have enough common sense to come in lower this time. That is what I'm hoping for and I agree with Ervin. I don't think we have any choice at all but to proceed with the project that we've started.

Pruitt: *I agree with Ervin and Craig. I certainly don't like the risk. I don't mind stepping up and saying it bothers me but it bothers me to do absolutely nothing. The unknown of what is going to happen ... what might happen with the 37 people ... if the sand's not distributed at the right time and it washes away ... it's all a risk but the risk of doing absolutely nothing...*

I can pretty much see what's going to happen over at our beach. We witnessed it twice in less than two months. We do not have very much beach left. It's all about in the road now. We need to do something. Doing nothing, I don't think, is an option for this council after we have gone this far. Once again the risks are high but the risk of doing nothing is even higher. With that being said I feel like we need to stay on board, hope the county works with us and we can get this project through.

Also, the citizens that haven't signed the easement. Well come forward to take some of this burden off of this council. It is putting a lot of weight on us to put this Town in a financial bind with possible lawsuits. It could potentially affect whether my child moves back to Kitty Hawk if the taxes are too high. I want to stay on board and if any of you know some of the residents that aren't signing the easements ... we're not taking your property. We just need to be able to work there. I'm on board to rebid and stay the course.

McClean: *I agree 100% with what the other councilmembers have already said. Gary this is, as always, an awesome summary of everything but I think the risk of doing nothing is higher than the risk of going forward. I really think we need to rebid and I think we need to sit back and see what comes in. There's a significant amount of business for the companies and perhaps some people who did not bid to begin with will come on board and send us some information.*

Perry: *There is a chance that one extra bidder will come forward. The reason that bidder did not bid was because he just couldn't work in 2016. He asked about pushing the project out to 2017 but everybody wants it done yesterday so he dropped out.*

The numbers are out there so the chances that it's going to be any lower certainly are not good. However pushing it into 2017 gives the beach nourishment tax fund another year to add some money and that's really what is being counted on as far as the rebids are concerned. A rebid

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doesn't mean if it comes in even higher it has to be accepted but at some point there is no more time because by the end of June a contract has to be signed or the MSD that is in place goes away and all that money goes back and you start over from scratch. Those are the options.

I want to add a couple of things before you make a motion so you can consider them. I called about the beach road and DOT engineer Jerry Jennings assured me that whether the beach nourishment goes forward or not it has no link to their commitment to keeping the road, as long as it's feasible, open and repaired. The State has recognized responsibility in that direction and unless a big storm washes everything away they will put it back.

I also had a discussion with Stanley Riggs and I read the book he and his colleagues wrote. I know some people have said we did not take into consideration academic thoughts on this matter. Well we did. I know Dr. Riggs from my time going to the Governor's Off Shore Energy meetings. I called him and we had a nice long talk. The book kind of stops short when it comes north of Oregon Inlet and I asked him about it. He wrote about a string of pearls and ferries and all that sort of thing but I didn't really see anything about what happens north of the inlet. It is kind of like they didn't want to go there. He said they do have some opinions. In fact NCDOT and academia apparently had some meeting a long time ago back when storms were tearing up NC 12 near the Black Pelican and they decided the best thing for our beach front was to turn it into a park. That was his answer so that's our studied people telling us what to do.

One other thing. If you commit today to the rebidding then basically once that bid comes in, and is accepted, you're in. There is no backing out at that point because it would be terribly disruptive. It would be disruptive now but it could be corrected if you were to pull out today. For example Kill Devil Hills could have their taper built in and Duck and Kill Devil Hills could rebid. Once the bid comes in for all three projects, and is accepted, then what ever comes that is ours. We own it and that includes any lawsuits that legal might have to deal with now or later.

I've done all I know how to bring you and the public the information that we have. Do I hear a motion?

Bateman: *Craig touched on this and I meant to say it also. The point he made about saving the properties between the highways and saving the road. That is a very intricate part of this whole beach replenishment project. If you were here during Isabelle you know we were devastated. We had up to 3 feet of water out there between the highways. It was a mess.*

Having said that I'd like to make a motion that we instruct the project engineer to rebid the Duck, Kitty Hawk and Kill Devil Hills project. MPT Garriss seconded the motion and it passed with a 4 to 1 vote. Mayor Perry voted no.

Perry: *No for the following reasons: (1) contingent funding has become unreliable considering the increased risk caused by the underfunded Beach Nourishment Occupancy Tax; (2) potentially huge legal costs caused by the numerous property owners that failed to provide construction*

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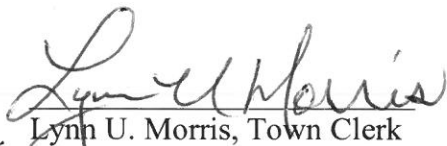
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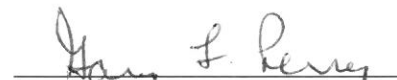
easements make continuing the project not in the best interest of the public at large; and, (3) the ability of the Town to provide essential services, necessary capital purchases, pay and benefits to employees would be severely impacted by either legal or nourishment cost over runs considering the increased risk factor previously documented.

4. ADJOURN

MPT Garriss made a motion to adjourn. It was seconded by Councilman Bateman and unanimously approved, 5-0. Time was 9:19 a.m.

These minutes were approved at the April 4, 2016 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor